IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.9706 of 1999

Between:

General Manager, (Designation Changed from Telecom District Manager)
Department of Telecom, Telecom District,
Kurnool.

..... PETITIONER

AND

1 Smt.S.K.Basheerunnisa Begum,
H.No.4471-6-A-2, Prakashnagar,
Kurnool.
2 The Chairman,
Industrial Tribunal-II, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, or order or directions more particularly one in the nature of Mandamus to declare the award dated 31-12-98 in I.D.No.44 of 1998 on the file of Industrial Tribunal-II, Hyderabad, as being illegal, null and void and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr. R.S.MURTHY

Counsel for Respondent No.1: Mr. V. HARI HARAN

Counsel for Respondent No.2: Government Pleader for Labour

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9706 of 1999

O R D E R :

This Writ Petition is filed by the General Manager (Telecom District Manager), Department of Telecom, Telecom District, Kurnool (Management) being aggrieved by the Award dated 31-12-1998 in I.D.No.44 of 1998 on the file of the Industrial Tribunal-II, Hyderabad.

It is the case of the petitioner-management that the activities of the Telecommunications are carried through regular sanctioned strength of Gazetted and Non-Gazetted consisting of Technical, Non-Technical and other Ministerial staff for operation and maintenance of Telecom network in the State including the District of Kurnool. The sanctioned posts are filled up in accordance with the Recruitment Rules framed under Article 309 of the Constitution of India and there is no scope to deviate from the Rules for the above purpose. The said posts are filled up by due process of selection. The Central Government imposed ban on filling up of vacant posts, due to which, the petitioner had to seek alternative of getting the urgent typing work done. Consequently, the urgent/excess typing work was entrusted to job typists and paid on the quantum of such work. The said work was got executed through job typists and type institutions upto the introduction of computers in the Office. Respondent No.1 being a job typist was entrusted with the urgent/excess typing work in December 1991, from February 1992 to March 1992, May 1992 to January,1993, March 1993 and July 1993 to September, 1993 and she was paid typing charges on simple money receipt basis at the end of each month, having regard to the quantum of work turned out by her. The said work was given intermittently. Respondent No.1 was not issued with any appointment order, as such, at any time and there was no scope for such an order being issued. Respondent No.1 approached the Central Administrative Tribunal by filing

O.A.No.1048 of 1997 wherein it was mentioned that she was engaged as a casual labourer from 19-7-1991 for doing the work of typing in addition to the duties of a Mazdoor. She claimed regularization under a scheme of casual labour's regularization. The said O.A. was disposed of on 14-8-1997 with a direction to engage the 1st respondent as a casual labourer and to consider her representation for regularization of services. She filed another O.A.No.1547 of 1997 seeking the very same relief of regularization. However, the same was dismissed as not maintainable. Respondent No.1 simultaneously raised an industrial dispute on 11-10-1996 claiming herself to be a 'workman' employed by the Department of Telecommunications. The Ministry of Labour, Government of India made the following reference under Section 10(2-A) and 1(d) of the Industrial Disputes Act,1947 (for short 'the Act') :

> "Whether the action of the Management of Telecom District Manager, Kurnool is justified in terminating the services of Smt. Sk. Basheerunnisa Begum without following the procedure of retrenchment? If not, to what relief she is entitled to ?"

The writ petitioner-respondent filed a detailed counter affidavit before the Tribunal denying the allegations made in the claim petition and asserting *inter alia* that the 1st respondent herein was not interested in the work after September,1993 and she was engaged during the month of December,1991, February 1992 to January 1993, March 1993 and July 1993 to September,1993. Since there was heavy typing work during that period, she was engaged and paid typing charges for the work done by her. She did not work in January 1992, February,1993 and April 1993 to June 1993, as there was no work in those months. There was no scope to engage the 1st respondent in any manner as all the Group-C posts designated as Telecom Office Assistant are civil posts filled in accordance with the recruitment rules framed under Article 309 of the Constitution. There was no post of casual typist; thus, there was no scope for appointing her as a Typist and as a necessary corollary there was no scope for her retrenchment. The provisions of Section 25-F of the Act are not attracted, since the 1st respondent was attending to typing work as a typist for intermittent period on payment on simple money receipts. There was no relationship of employer and employee between the Department and the workman and the claim petition was liable to be dismissed. However, the Tribunal came to the conclusion that the 1st respondent was a workman and she was retrenched without following the procedure and the management also indulged in unfair labour practice

as they kept the 1st respondent, whether as a casual or temporary, for a long time and respondent No.1 is entitled for reinstatement, but in the circumstances of the case, without any back wages. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the 1st respondent herein denying the allegations made by the petitioner and supporting the impugned Award of the Tribunal.

Learned counsel for the petitioner strenuously contended that there is no relationship of master and servant between the petitioner and the 1st respondent. Respondent No.1 was only entrusted with some job work. Further, there was a ban on recruitment and furthermore there was no post like Typist available in the Telecom District of Kurnool. Therefore, the question of appointing the 1st respondent as a Typist or engaging her services as a Typist does not arise. Merely some job work was given on piece meal basis, the 1st respondent cannot claim that she is the employee of the petitioner Telecom Department and she cannot claim that her services were terminated illegally. Therefore, the impugned Award is based on erroneous appreciation of facts and on mere presumptions and assumptions.

Per contra, learned counsel for the 1st respondent supported the Award passed by the Tribunal and submitted that the impugned Award is reasonable and within the parameters of labour jurisprudence. Even assuming, without being admitted, that the 1st respondent was a job typist, her services could not have been terminated without following the due process of law.

I have given my earnest consideration to the respective submissions of the learned counsel on either side and perused the Award passed by the Tribunal and also the other material made available on record.

At the outset, I am of the opinion that the Tribunal has not committed any error in coming to the conclusion that the 1st respondent-workman is entitled for reinstatement with continuity of service, but without any back wages. The petitioner-management has not denied the fact that the 1st respondent was entrusted with the job of Typist or typing work, whether intermittently or continuously. It is also not denied that the 1st respondent was directly engaged by the department, assuming that she was paid on simple money receipt basis. The Tribunal gave a categorical

finding that the services of the 1st respondent were dispensed with unceremoniously, without following the procedure as contemplated under Section 25-F of the Act. The same is based on the evidence on record and therefore, it cannot be said to be either arbitrary or illegal. Therefore, the contention of the learned counsel for the petitioner that the 1st respondent was only a piece rate worker and she cannot claim that she is an employee of the Telecom Department and allege that her services were terminated illegally, cannot be countenanced. Even a piece rated worker is considered to be a 'workman' under the Act and he/she is entitled to invoke the jurisdiction of the Industrial Court for working out his/her remedies. In the light of the above, the contention of the learned counsel for the petitioner that the appointments are regulated by statutory Rules cannot be acceded to.

Learned counsel for the petitioner relied upon the decision of the Supreme Court in **MADHYAMIK SIKSHA PARISAHD, U.P. v. ANIL KUMAR MISHRA** in which it was held that the persons working in Education Board on *ad hoc* assignment in the unsanctioned posts have no right of regularization. This is not a case of regularization and it is a case of retrenchment. Therefore, the said decision has no relevance to the facts of this case. He further relied upon another decision of the Apex Court in **STATE OF HARYANA v. SURINDER KUMAR & OTHERS** to impress upon the Court that the daily wagers on contract basis, who were posted as Clerks, cannot seek regularization and any appointment to the service has to be in accordance with statutory rules and guidelines laid down thereunder. There cannot any dispute as to this proposition. But, such a situation has not arisen in the instant case. Learned counsel relied upon yet another decision of the Apex Court in **H.K. VIDYARTHI & OTHERS v. STATE OF BIHAR & OTHERS** wherein the concept of 'industry' was mainly dealt with and it was held that once the statutory rules excluded the concept of 'industry', there is no question of filing a petition before the Tribunal. There cannot be any dispute insofar as this proposition is concerned. But, the said decision has no relevance to the facts of this case. Learned counsel also relied upon a judgment of a Division Bench of this Court in **NUCLEAR FUEL COMPLEX, HYDERABAD v. K. PENTA REDDY** for the proposition that there is no question of retrenchment for the casual labour employed by a contractor for a specific job and for a particular period and they are not entitled for regularization in the services of the company, which employed the contractor. No such question has

arisen in the case on hand. There was absolutely no evidence to show that the 1st respondent was engaged through a contractor for a particular period and thereafter her services were terminated. Admittedly, the 1st respondent was engaged directly by the Department itself. Assuming that the 1st respondent was engaged for intermittent periods, that does not mean that the petitioner-employer can terminate the services of the 1st respondent without following the provisions under Section 25-F of the Act, since she had completed 240 days of service preceding the date of her termination. The above decision also has no application to the facts of this case.

From the above discussion, neither it can be said that there is no master and servant relationship between the petitioner and the 1st respondent nor the 1st respondent is not a 'workman' within the meaning of the Industrial Disputes Act nor that the Award passed by the Tribunal suffers from any infirmity calling for interference of this Court under Article 226 of the Constitution of India. The Writ Petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

-8-2005

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